

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT**

DANIEL PLOURDE, MARGARET	:	
PLOURDE, DANIEL and MARGARET	:	
PLOURDE as parents and next	:	
best friends of their minor	:	
son ANDRE PLOURDE; and DANIEL	:	
and MARGARET PLOURDE as parents	:	
and next best friends of their	:	
minor daughter DANIELE PLOURDE	:	
	:	
v.	:	Docket No. 1:00-CV-194
	:	
WALTER GLADSTONE, CRAIG W.	:	
TRISCHMAN and TWIN STATE	:	
FERTILIZER, INC.	:	
	:	
	:	
	:	

RULING ON DEFENDANT GLADSTONE'S CLAIM ON INJUNCTION BOND
(Paper 155)

The relevant facts underlying this claim are set forth in the Court's prior Ruling on Defendants' Joint Motion for Summary Judgment (Paper 113). At the outset of Plaintiffs' action, the parties stipulated to a Temporary Restraining Order ("TRO") dated June 29, 2000, and the Court ordered Plaintiffs to post an injunction bond in the amount of \$30,000 as security. The TRO prohibited Gladstone from spraying herbicides on his property. On July 10, 2000, Plaintiffs' request for a preliminary injunction was denied and the TRO expired.

Defendant Gladstone filed a Claim on Injunction Bond on July 30, 2003 (Paper 155), and a hearing was held on December 4, 2003. Gladstone seeks damages totaling \$20,506 resulting from alleged damage to his corn crop caused during the pendency of the TRO. (See Paper 155, ¶ 3.) For reasons stated below, Gladstone's Claim on Injunction Bond is DENIED.

DISCUSSION

_____The purpose of requiring security prior to issuance of a TRO is to guarantee payment of costs and damages incurred by a party who is wrongfully enjoined or restrained. Interlink Int'l Fin. Servs., Inc. v. Block, 145 F. Supp. 2d 312, 314 (S.D.N.Y. 2001) (quoting 13 Moore's Federal Practice at 65-94.1 (1997)). "A party has been 'wrongfully enjoined' under Rule 65(c) if it is ultimately found that the enjoined party had at all times the right to do the enjoined act." Medafrica Line, S.P.A. v. American West African Freight Conf., 654 F. Supp. 155, 156 (S.D.N.Y. 1987). In this case, the denial of a preliminary injunction and dismissal of the action establish that Gladstone was wrongfully enjoined. See id.

A party wrongfully enjoined is entitled to damages, up to the amount of the bond, as may be shown to have been proximately caused by the injunction. See Blumenthal v. Merrill Lynch Inc., 910 F.2d 1049, 1055 (2d Cir. 1990) (citations omitted). District courts, however, retain

discretion to deny recovery under an injunction bond. Coyne-Delany Co. v. Capital Dev. Bd., 717 F.2d 385, 390 (7th Cir. 1983) (listing the factors to consider in assessing a claim on bond, including the failure to mitigate damages). Moreover, damages claimed under an injunction bond must arise from the operation of the injunction itself, not from damages occasioned by the suit independently of the injunction. Medafrica Line, 654 F. Supp. at 156 (citing Lever Bros. Co. v. Int'l Chem. Workers Union, 554 F.2d 115, 120 (4th Cir. 1976)).

As a threshold matter, in order to recover damages a claimant must demonstrate that damages occurred. Even assuming the lowest standard of preponderance of the evidence, Gladstone's claim fails. The claim, predicated on imprecise factual information and testimony which was, at best, contradictory regarding the status of his corn crop before, during, and after the TRO, is simply unpersuasive and does not demonstrate that failure to spray his crops during the brief pendency of the TRO proximately caused damages. As his only witness at the December 4 hearing, Gladstone himself was not able to recall which crops were sprayed before the TRO. Instead, Gladstone's alleged losses are based solely on his own recollection, which proved to be unreliable; he offers no crop evaluation reports, photographs of damaged corn, or testimony from his herbicide applicator.

Additionally, even if Gladstone had established damages, the Plourdes offered compelling evidence demonstrating Gladstone failed to mitigate losses by using alternative herbicides available to him for use after the TRO expired. (See, e.g., Pls.' Ex. 24) Gladstone did not rebut this evidence, nor did he explain why an alternative herbicide was not used.

CONCLUSION

For the foregoing reasons, Defendant Gladstone's Claim on Injunction Bond is DENIED.

SO ORDERED.

Dated at Brattleboro, Vermont this ____ day of January, 2004.

J. Garvan Murtha, U.S. District Judge